Nos. 82-898 & 82-977

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MINNESOTA STATE BOARD FOR COMMUNITY COLLEGES, *et al.*,

Appellants,

v.

LEON W. KNIGHT, *et al.*,

Appellees;

and

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, *et al.*,

Appellants,

v.

LEON W. KNIGHT, *et al.*,

Appellees.

On Appeal from the United States District Court for the District of Minnesota

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APPELLEES' MEMORANDUM IN RESPONSE TO JURISDICTIONAL STATEMENTS

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INTRODUCTION

Pursuant to this Court's request, Appellees Leon W. Knight, *et alia*, hereby support the Court's assumption of jurisdiction in these cases.

STATEMENT IN SUPPORT OF JURISDICTION

Together with case No. 82-901,[1] cases Nos. 82-898 and 82-977 arise out of the same basic challenge to the exclusive-representation scheme of Minnesota's Public Employment Labor Relations Act (PELRA). The District Court held that this scheme is constitutional in so far as it applies to *negotiations* between the Minnesota Community College Faculty Association (MCCFA) and the Minnesota State Board for Community Colleges (Board), and unconstitutional in so far as it applies to *conferences* between these parties.[2] Leon Knight appealed the first ruling in No. 82-901; and the Board and MCCFA appealed the second in Nos. 82-898 and 82-977.

Just as they invoked this Court's jurisdiction in their own appeal, Appellees emphatically assert that jurisdiction here. Appellees reject any contention that this "appeal is not within this Court's jurisdiction, or * * * not taken in conformity with statute or with [this Court's] Rules".[3] They deny that "the questions on which the decision of the cause depends are so unsubstantial as not to need further argument".[4] And they admit their inability to offer "any other ground

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[1] Knight v. Minnesota Community College Faculty Ass'n, No. 82-901 (U.S. Sup. Ct., Jurisdictional Statement filed 1 December 1982).

[2] Appendix to Jurisdictional Statement of Appellant Minnesota State Board for Community Colleges in No. 82-898, at A-8 to A-17, and A-17 to A-29.

[3] Rule 16.1(a) of the Rules of the Supreme Court of the United States. *See* 28 U.S.C. § 1253 (1976).

[4] Rule 16.1(c) of the Rules of the Supreme Court of the United States.

* * * as a reason why the Court should not set the case[s] for argument".[5]

Indeed, because the three companion cases Nos. 82-901, 82-898, and 82-977 involve interrelated constitutional attacks on exclusive representation in public-sector employment, Appellees submit that no reasonable ground exists for the Court to refuse to exercise jurisdiction over any of them. For the stark judicial fact is that *this Court has never sustained exclusive representation, in principle or as applied, in public employment, in private employment, or in any other area of human endeavor.* To the contrary: In every instance where the issue arose, this Court has declared the device, or its applications, unconstitutional.

The leading decision in private employment is *Carter* v. *Carter Coal Co.*[6] As the Court said there, referring to the exclusive-representation labor-provisions of the Bituminous Coal Conservation Act,[7]

> [t]he effect, in respect of wages and hours, is to subject the dissentient minority * * * to the will of the * * * majority * * *.
>
> The power conferred upon the majority is, in effect, the power to regulate the affairs of an unwilling minority. This is legislative delegation in its most obnoxious form; for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of others in the same business.[8]

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[5] Rule 16.1(d) of the Rules of the Supreme Court of the United States.

[6] 298 U.S. 238 (1936).

[7] Act of 30 August 1935, ch. 824, 49 Stat. 991.

[8] 298 U.S. at 311.

And, as Chief Justice Hughes added,

> [t]he [majority-rule] provision permits a group of * * * employees, according to their own views of expediency, to make rules as to hours and wages for other * * * employees who are not parties to the agreements. Such a provision, apart from the mere question of the delegation of legislative power, is not in accord with the requirements of due process of law.[9]

Self-evidently, the holding in *Carter* is directly relevant to every form of governmentally imposed exclusive representation,[10] and remains as valid and vital today as when enunciated nearly half a century ago.[11] Certainly the application of *Carter* to the PELRA's exclusive-representation scheme is a not "unsubstantial" question that "need[s] further argument".[12]

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[9] *Id.* at 318 (concurring opinion).

[10] *Carter* would not reach purely voluntary arrangements adopting exclusive representation that private employers and unions negotiated under common law or pursuant to merely permissive statutory authority.

[11] The *Carter* Court premissed its holding on earlier decisions in *A.L.A. Schechter Poultry Corp.* v. *United States*, 295 U.S. 495 (1935), *Washington* ex rel. *Seattle Title Trust Co.* v. *Roberge*, 278 U.S. 116 (1928), and *Eubank* v. *City of Richmond*, 226 U.S. 137 (1912). 298 U.S. at 311-12. Since then, these cases have received approbation in many opinions. *E.g.*, Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668, 677-78 (opinion of the Court), 683 & n.5 (Stevens, J., dissenting) (1976); Village of Belle Terre v. Boraas, 416 U.S. 1, 6-7 (1974); National Cable Television Ass'n, Inc. v. United States, 415 U.S. 336, 342 (1973); New Motor Vehicle Bd. of California v. Orrin W. Fox Co., 439 U.S. 96, 125-26 & n.30 (1978) (Stevens, J., dissenting); McGautha v. California, 402 U.S. 183, 252-54 & nn.2-3, 271-73 & nn.21-22 (1971) (Brennan, J., dissenting).

[12] Appellees intend to defend the District Court's decision in Nos. 82-898 and 82-977 in part on the same grounds that they oppose that Court's ruling in No. 82-901.

After *Carter*, the unconstitutionality of exclusive representation in private employment escaped judicial review on three occasions. When the validity of the National Labor Relations Act [13] was first in issue, the Labor Board selected its test-cases "intentionally [to] avoi[d] presenting the Court with [this] 'touchy' and * * * doubtful questio[n]".[14] And in *NLRB* v. *Jones & Laughlin Steel Corp.*,[15] this Court avoided the problem of *exclusive* representation by interpreting the statute to permit individual employees to bargain directly with their employer over the terms and conditions of their employment.[16] Similarly, in a contemporaneous challenge to the Railway Labor Act [17] in *Virginian Railway* v. *System Federation No. 40*,[18] the Court held that exclusive representation under that statute allowed individual contracts between an employer and its employees.[19] These holdings reflected

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[13] Act of 5 July 1935, ch. 372, 49 Stat. 449, *now* 29 U.S.C. § 151 *et seq.* (1976).

[14] J. A. Gross, *The Making of the National Labor Relations Board: A Study in Economics, Politics and the Law, 1933-1937* (1974), at 187.

[15] 301 U.S. 1 (1937).

[16] *Id.* at 45 (act does not prevent "employer 'from refusing to make a collective contract and hiring individuals on whatever terms' the employer 'may by unilateral action determine' ").

[17] Act of 20 May 1926, ch. 347, 44 Stat. 577, *now* 45 U.S.C. § 151 *et seq.* (1976).

[18] 300 U.S. 515 (1937).

[19] *Id.* at 548-49.

the unanimous position of the litigants on the issue.[20] The later decision in *Steele* v. *Louisville & Nashville Railroad Co.*[21] also pretermitted the question, by creating the "duty of fair representation"—precisely to avoid grappling with serious problems of due process and equal protection that unlimited exclusive representation raised.[22]

In its first decision implicating exclusive representation in public employment, *City of Madison, Joint School District No. 8* v. *WERC*,[23] this Court felt it unnecessary to define "the extent to which true contract negotiations between a public body and its employees may be regulated".[24] But it squarely held

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[20] *See* Arguments in Cases Arising Under the Railway Labor Act and the National Labor Relations Act Before the Supreme Court of the United States, February 8-11, 1937, S. Doc. No. 52, 75th Cong., 1st Sess. (1937), at 13, 33-34, 40, 88-89, 118.

Only seven years later, in cases raising issues of statutory construction alone, did this Court purport to re-interpret the National Labor Relations and Railway Labor Acts to preclude individual contracts under some circumstances. J. I. Case Co. v. NLRB, 321 U.S. 332, 334-39 (1944); Order of R.R. Telegraphers v. Railway Express Agency, Inc., 321 U.S. 342, 346-47 (1944). Neither of these decisions, however, reconsidered the constitutional matters discussed in *Jones & Laughlin Steel Corp.* and *Virginian Railway*, although the statutory constructions adopted in those cases predicated their constitutional holdings. *See* Comment, "The Mechanics of Collective Bargaining", 53 *Harv. L. Rev.* 745, 789-91 (1940).

[21] 323 U.S. 192 (1944).

[22] *Id.* at 198. *See* Vaca v. Sipes, 386 U.S. 171, 182 (1967). *See generally, e.g.*, Weyland, "Majority Rule in Collective Bargaining", 45 *Colum. L. Rev.* 556, 568-69 (1945).

[23] 429 U.S. 167 (1976).

[24] *Id.* at 175.

under the First and Fourteenth Amendments that "the principle of exclusivity cannot constitutionally be used to muzzle a public employee who * * * might wish to express his view about governmental decisions concerning labor relations".[25] More recently, this Court heard oral argument in *Perry Education Association* v. *Perry Local Educators' Association*,[26] a case raising the question of the extent to which an exclusive representative of public-school teachers may constitutionally negotiate special privileges for itself in a collective-bargaining agreement in order to stifle dissent from its policies among employees in its bargaining-unit.

Obviously, these *post-Carter* decisions demonstrate beyond cavil: (i) that this Court has never addressed the constitutionality of exclusive representation itself under a private- or public-sector labor-relations act;[27] and (ii) that this Court has found not "insubstantial" and "need[ful of] further argument" mere secondary effects of exclusivity far less constitutionally significant than the primary issues the parties raise in Nos. 82-901, 82-898, and 82-977.

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[25] Abood v. Detroit Bd. of Educ., 431 U.S. 209, 230 (1977) (opinion of Stewart, J.).

[26] No. 81-896 (U.S. Sup. Ct., oral argument held 13 October 1982).

[27] Although, strictly speaking, *Carter* turned on the unconstitutionality of the labor-provisions of the Bituminous Coal Conservation Act, to label it solely a "labor-law" decision would nonetheless be misleading, as it dealt more fundamentally with the invalidity of corporative-state arrangements in general. *See* Vieira, "Compulsory Public Sector Collective Bargaining: The Trojan Horse of Corporativism", *Gov't Union Rev.*, Vol. 2, No. 1 (Winter 1981), at 56. *See also* P. Bradley, *Constitutional Limits to Union Power* (1976).

CONCLUSION

Appellees therefore urge this Court to take jurisdiction of Nos. 82-898 and 82-977, and set these cases (together with No. 82-901) down for full briefing and oral argument.

Respectfully submitted,

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